

IN THE UNITED STATES PATENT OFFICE

In re patent application of:) Before the Examiner:
Mark A. Stansbury) Anita M. King
Application No. 10/669,829) Group Art Unit 3632
Filed September 24, 2003)
FURNACE MOUNT AND)
METHOD OF INSTALLATION)

APPEAL BRIEF .

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Sir:

Pursuant to the Notice of Appeal filed with the United States Patent Office on July 10, 2008 and to the Notification of Non-Compliant Appeal Brief on May 21, 2009 in connection with the above-indicated application, a corrected Appeal Brief according to 37 CFR § 41.37 is provided. Statements citing references not entered by the Examiner on page 13 were removed. The Commissioner is authorized to grant any extensions of time, and charge any deficiency or credit any overpayment to Deposit Account No. 12-2424, but not to include issue fees.

I. REAL PARTY IN INTEREST

Per 37 CFR §41.37(c)(1)(i), NSA LLC is the successor in interest of NSA Corporation and is the real party in interest. NSA Corporation obtained ownership of the present application by written assignment recorded at reel/frame number 012262/0309. NSA has licensed an interest to Bramec Corporation of South Dakota.

II. RELATED APPEALS AND INTERFERENCES

Per 37 CFR §41.37(c)(1)(ii), The Appellant, Appellant's legal representative, and the assignee are unaware of any related appeals or interferences which will affect, be directly affected by, or have a bearing on the Appeal Board's decision in the present appeal.

III. STATUS OF CLAIMS

Per 37 CFR §41.37(c)(1)(iii), claims 5-12, 15, 17-22, 26, 28-31, 34, 35, 40, 43, 45-53 and 56-58 are pending, all of which stand rejected. All rejections are appealed hereby on the grounds further explained hereinafter. Claims 1-4, 13, 14, 16, 23-25, 27, 32, 33, 36-39, 41, 42, 44, 54 and 55 have been canceled. The claims are presented in the Claims Appendix in accordance with 37 CFR §41.37(c)(1)(viii).

IV. STATUS OF AMENDMENTS

Per 37 CFR §41.37(c)(1)(iv), the present Appeal Brief is in response to a Final Office Action indicated as having a mail date of July 8, 2008. The claims that are on

appeal are those set forth in Appellant's Amendment mailed December 10, 2007, which was received by the USPTO on December 14, 2007.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Per 37 CFR §41.37(c)(1)(v), the following summarization provides a concise explanation of the subject matter defined in each of the independent claims involved in the appeal. All citations to the present application refer to Publication Number US 2005/0035266 published on Feb. 17, 2005.

Claim 15 states, "A mount for supporting a furnace above the floor, comprising: a substantially rigid main body member having a first surface adapted to engage the floor and a second surface spaced from said first surface and adapted to support the furnace above the floor; a vibration dampening component positioned on and connected with said second surface, said vibration dampening component having an outer adhesive surface adapted to engage and couple said main body member with the furnace; and wherein said main body member has a locating portion extending from said second surface to abut an outer surface of the furnace and position said second surface relative to the furnace, said locating portion includes two upstanding members that are oriented perpendicular to one another."

An exemplary embodiment of claim 15 is described in Figures 1-10 and related text. A member 13 includes a floor elevation body member portion 15 and an upstanding attachment member portion 16. See paragraph 32, lines 7-9. The member 13 is formed from a metallic material, composite materials, polymeric materials,

synthetic organic materials, and/or plastic. See paragraph 23, lines 16-21. A first surface 116 engages the floor and a second surface 117 is spaced from the first surface 116 and supports the furnace above the floor. See paragraph 27, lines 2-12. A vibration dampening pad 19 is positioned between the furnace and the second surface 117. See paragraph 24, lines 1-3. In one form, a vibration dampening material 126 is located on and supported by the second surface 117, and an adherent layer 125 is on a furnace side surface of the vibration dampening material 126. See paragraph 30, lines 1-6, and lines 21-23. A locating portion 120 including two upstanding members 121 oriented perpendicular to one another is described, where the locating portion 120 abuts an outer surface 10a of the furnace. See paragraph 28, lines 11-15.

Claim 21 states, "A combination, comprising: a furnace having outer walls that define four corners; and a plurality of furnace mounts adapted to hold the furnace above a floor, each of said plurality of mounts located at and abutting the outer walls defining each of said comers, wherein each of said plurality of mounts comprises: a substantially rigid main body member having a first surface adapted to engage the floor and a second surface spaced from said first surface and supporting the furnace above the floor; a vibration dampening component positioned on and connected with said second surface, said vibration dampening component having an outer adhesive surface coupling said main body member with the furnace; and wherein said main body member has an integrally formed locating portion extending from said second surface to abut an outer surface of the furnace and position said second surface relative to the furnace."

An exemplary embodiment of claim 21 is described in Figures 1-10 and related text. A furnace 10 having four corners is described with members 14 at each of the four corners. See paragraph 22, lines 6-10. A member 13 includes a floor elevation body member portion 15 and an upstanding attachment member portion 16. See paragraph 32, lines 7-9. The member 13 is formed from a metallic material, composite materials, polymeric materials, synthetic organic materials, and/or plastic. See paragraph 23, lines 16-21. A first surface 116 engages the floor and a second surface 117 is spaced from the first surface 116 and supports the furnace above the floor. See paragraph 27, lines 2-12. A vibration dampening pad 19 is positioned between the furnace and the second surface 117. See paragraph 24, lines 1-3. In one form, a vibration dampening material 126 is located on and supported by the second surface 117, and an adherent layer 125 is on a furnace side surface of the vibration dampening material 126. See paragraph 30, lines 1-6, and lines 21-23. A locating portion 120 including two upstanding members 121 oriented perpendicular to one another is described, where the locating portion 120 abuts an outer surface 10a of the furnace. See paragraph 28, lines 11-15.

Dependent claim 29 states, “The combination of claim 21, wherein each of said plurality of furnace mounts are coupled to the furnace free of any mechanical fasteners.”

An exemplary embodiment of claim 29 is described at paragraph 29, “[t]he adhesive material securely couples the furnace mounting block 111 with the furnace 10. In one form of the present invention the adhesive material is a double backed tape, however other material such as, but not limited to, glue are contemplated herein.” See paragraph 29, lines 6-10.

Claim 40 states, “A mount for supporting a furnace above the floor, comprising: a molded integrally formed rigid main body member having a first surface adapted to engage the floor and a second surface spaced from said first surface and adapted to support the furnace above the floor; an adherent component connected with said main body member and located proximate said second surface, said adherent component including an adhesive surface adapted to engage and couple said main body member with the furnace; and means for locating the furnace on said second surface, wherein said means for locating the furnace is adapted to abut the furnace.”

An exemplary embodiment of claim 40 is described in Figures 1-10 and related text. A molded integrally formed rigid main body member 13 (see paragraph 23, lines 7-14) includes a first surface adapted to engage the floor and a second surface spaced from said first surface and adapted to support the furnace above the floor (see paragraph 27, lines 2-12). An adherent component connected with the main body member and located proximate to the second surface includes an adhesive surface adapted to engage and couple the main body member with the furnace. See paragraph 30 lines 1-6 and lines 21-23. A means for locating the furnace on the second surface, and adapted to abut the furnace, is described in various places including paragraph 23 lines 24-32, paragraph 28 lines 1-17, paragraph 31 lines 3-8, paragraph 32 lines 10-13, and paragraph 32 lines 16-19.

Claim 46 states, “A mount for supporting a furnace above the floor, comprising: a substantially rigid main body member having a first surface adapted to engage the floor and a second surface spaced from said first surface and adapted to support the

furnace above the floor; a vibration dampening component positioned on and connected with said second surface, said vibration dampening component having an outer adhesive surface adapted to engage and couple said main body member with the furnace; and wherein said main body member has a locating portion extending from said second surface to abut an outer surface of the furnace and position said second surface relative to the furnace.”

An exemplary embodiment of claim 46 is described in Figures 1-10 and related text. A substantially rigid main body member 13 (see paragraph 23, lines 7-14) includes a first surface adapted to engage the floor and a second surface spaced from said first surface and adapted to support the furnace above the floor (see paragraph 27, lines 2-12). A vibration dampening component 19 is positioned on and connected with the second surface. See paragraph 24, lines 1-3. In one form, a vibration dampening material 126 is located on and supported by the second surface 117, and an outer adhesive surface 125 engages and couples the main body to the furnace. See paragraph 30, lines 1-6, and lines 21-23. A locating portion 120 extends from the second surface to abut an outer surface of the furnace and to position the second surface relative to the furnace. See paragraph 32, lines 10-13.

Claim 51 states, “A combination, comprising: a furnace having outer walls that define four comers; and a plurality of furnace mounts adapted to hold the furnace above a floor, each of said plurality of mounts located at and abutting the outer walls defining each of said corners, wherein each of said plurality of mounts comprises: a substantially rigid molded main body member having a first surface adapted to engage the floor and

a second surface spaced from said first surface and supporting the furnace above the floor, said main body member is a single piece integrally formed structure including a locating portion adapted to abut at least one of the outer walls of the furnace; and a vibration dampening component positioned on and connected with said second surface, said vibration dampening component having an outer adhesive surface coupling said main body member with the furnace.”

An exemplary embodiment of claim 51 is described in Figures 1-10 and related text. A furnace 10 having four corners is described with members 14 at each of the four corners holding the furnace above the floor and abutting the outer walls. See paragraph 22, lines 6-10, and paragraph 32, lines 7-9. A molded, integrally formed, substantially rigid main body member 13 (see paragraph 23, lines 7-14) includes a first surface adapted to engage the floor and a second surface spaced from said first surface and adapted to support the furnace above the floor and abut at least one outer wall of the furnace (see paragraph 27, lines 2-12). A vibration dampening component 19 is positioned on and connected with the second surface. See paragraph 24, lines 1-3. In one form, a vibration dampening material 126 is located on and supported by the second surface 117, and an outer adhesive surface 125 couples the main body to the furnace. See paragraph 30, lines 1-6, and lines 21-23.

Claim 56 states, “A mount for supporting a furnace above the floor, comprising: an integrally formed main body member having a first surface adapted to engage the floor and a second surface spaced from said first surface and adapted to support the furnace above the floor, said main body member including a pair of integrally formed

upstanding wall members defining a locator portion to abut an outer surface of the furnace and position the furnace relative to said main body member; and an adherent component connected with said main body member and located proximate said second surface, said adherent component including an adhesive surface adapted to engage and couple said main body member with the furnace.”

An exemplary embodiment of claim 56 is described in Figures 1-10 and related text. An integrally formed rigid main body member 13 (see paragraph 23, lines 7-14) includes a first surface adapted to engage the floor and a second surface spaced from said first surface and adapted to support the furnace above the floor (see paragraph 27, lines 2-12). A pair of integrally formed upstanding wall members 121 define a locating portion 120 that abuts an outer surface of the furnace and positions the second surface relative to the furnace. See paragraph 28, lines 12-15. In one form, an adherent component includes a vibration dampening material 126 located on and supported by the second surface 117, and an outer adhesive surface 125 engages and couples the main body to the furnace. See paragraph 30, lines 1-6, and lines 21-23.

Dependent claim 5 states, “The mount of claim 56, which further includes a vibration dampening material located on said second surface and adapted to receive the furnace thereon, and wherein said vibration dampening material is defined by an elastomeric material.” An exemplary embodiment of claim 5 is described at paragraph 30, lines 1-3 and lines 15-17.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Pursuant to 37 CFR §41.37(c)(1)(vi), review of the following issues are presented in this appeal:

A. The rejection of claims 29, 45, 48, 50 and 52 under 35 U.S.C. §112 as failing to comply with the enablement requirement.

B. The rejection of claims 5, 8-11, 26, 30, 31, 34, 35, 40, 43 and 56-58 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 1,887,283 to Brabson (Brabson) and U.S. Patent No. 3,326,508 to Born (Born).

C. The rejection of claims 6 and 12 under 35 U.S.C. §103(a) as being unpatentable over Brabson, Born, and U.S. Patent No. 1,880,153 to Rosenzweig (Rosenzweig).

D. The rejection of claim 7 under 35 U.S.C. §103(a) as being unpatentable over Brabson, Born, and U.S. Patent No. 3,583,215 to Franz (Franz).

E. The rejection of claims 15, 17-20, 28, 46, 47 and 49 under 35 USC § 103(a) over Brabson, U.S. Patent No. 4,721,275 to Benton, et al., (Benton), and Born.

F. The rejection of claims 21, 22, 51 and 53 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 1,647,828 to Griswold (Griswold), Brabson, Benton, and Born.

VII. ARGUMENTS

The following remarks address the different grounds of rejection in accordance with 37 CFR § 41.37(c)(1)(vii).

For purposes of clarification, Appellants assert that if claim 56 is allowable, all remaining claims in the present application are allowable for analogous reasons or for depending upon an allowable claim. Appellants assert that if claim 5 is allowable and claim 56 is not allowable, claims 5-12, 15, 17-20, 21, 22, 27, 29, 34, 35, 46, 47-50, 51-53, and 58 are also allowable for analogous reasons or for depending upon an allowable claim.

Some of the rejections herein are based on 35 U.S.C. § 103(a). The seminal case directed to application of 35 U.S.C. § 103 is *Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966). From this case, four familiar factual inquiries have resulted. The first three are directed to the evaluation of prior art relative to the claims at issue, and the last is directed to evaluating evidence of secondary considerations. See, MPEP §2141.

The examiner bears the burden of establishing a prima facie case of obviousness. See, *In re Warner*, 379 F.2d 1011, 1016, 154 USPQ 173 (CCPA 1967), cert. denied, 389 U.S. 1057 (1968). To meet this burden, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a

reasonable expectation of success. Third, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. See, MPEP § 2142, citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). *KSR v. Teleflex*, 550 U.S. ____ (2007), makes clear that “the [Graham] factors continue to define the inquiry that controls.” *KSR* at 2. For the following reasons, these criteria have not been met and a prima facie case of obviousness has not been established.

A. The rejection of claims 29, 45, 48, 50 and 52 under 35 U.S.C. §112 as failing to comply with the enablement requirement.

The Final Office Action (Final) states that “Claims 29, 45, 48, 50, and 52... contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The above mentioned claims cite the limitation the ‘plurality of furnace mounts are coupled to the furnace free of any mechanical fasteners’; this limitation negates the claim language of claim 21, 40, 46, and 50 [sic] from which the above claims depend. The adhesive surface or adherent component cited in claims 21, 40, and 46 is a mechanical fastener and thus, claims 29, 45, and 48 have not been further treated on their merits.” Final, at page 2.

Appellants respectfully traverse the rejection. The Specification states that “[i]n one form of the present invention the adhesive material is a double backed tape,

however other materials such as, but not limited to, glue are contemplated herein.” See paragraph 29, lines 7-10. In another section, the Specification states “[t]he furnace mounting block with the adhesive exposed is positioned proximate the bottom surface 20 of the furnace 10.” See paragraph 32, lines 8-10, emphasis added. The Specification presents clear examples of the adhesive surface or adherent component as an adhesive or a glue. One of skill in the art views a glue or adhesive as a chemical fastener, and views a mechanical fastener as requiring a mechanical component. By way of example, the reference U.S. Patent 3,669,066 to Smith contrasts “adhesive binding” with a series of mechanical fastening means including “wire staples, ring and spiral binders, cotter clips and the like.” Smith at col. 1, lines 35-41. As another example, the reference U.S. Patent 3,794,181 to Canham contrasts “highly adhesive material” with “screws or other fasteners” as alternate methods to fix a holder to a wall. Canham at col. 2, lines 59-66. As a third example, the reference U.S. 5,557,824 to Bushey contrasts attachment by “screws, threaded stems, nails, or by press fitting” with an adhesive. Bushey at col. 1, lines 25-29, 39, and 54-55. Therefore, the specification clearly enables one of skill in the art to make and/or use the invention described in claims 29, 45, 48, 50, and 52.

Appellants assert that the Specification clearly describes embodiments that do not include a mechanical fastener. Further, for the reasons described above, one of skill in the art would not consider an adhesive to be a mechanical fastener, but rather a chemical fastener. Therefore, Appellants submit that the rejection of claims 29, 45, 48,

50, and 52 under 35 U.S.C. § 112 is improper, and requests that the rejection be withdrawn.

B. The rejection of claims 5, 8-11, 26, 30, 31, 34, 35, 40, 43 and 56-58 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 1,887,283 to Brabson (Brabson) and U.S. Patent No. 3,326,508 to Born (Born).

Claim 56 states, in relevant part, “an adherent component connected with said main body member and located proximate said second surface, said adherent component including an adhesive surface adapted to engage and couple said main body member with the furnace.” Claim 5 depends upon claim 56, and further includes, in relevant part, “a vibration dampening material located on said second surface and adapted to receive the furnace thereon, and wherein said vibration dampening material is defined by an elastomeric material.”

The Final acknowledges that Brabson does not include “an adherent component connected with the main body member and located proximate the second surface and a vibration dampening material located on the second surface.” See Final, page 3, lines 15-17. The Final states that Born teaches the missing aspects of Brabson, and asserts that one of skill in the art would have found it obvious to modify Brabson with elements of Born. The Appellants traverse the rejection of these claims under 35 U.S.C. § 103(a), and assert that claims 5, 8-11, 26, 30, 31, 34, 35, 40, 43, and 56-58 are patentable over Brabson and Born because that one of skill in the art would not

combine the teachings of Brabson and Born, and because secondary considerations strongly favor a finding of non-obviousness in the present application.

1) The combination of Brabson and Born is improper

Brabson discloses a “furniture support intended for stabilizing furniture in positions selected, so that it may not be casually moved about” (page 1, lines 68-72). The support is a substantially planiform rectangular plate 20 having upstanding integral flanges 21 (page 1, lines 76-78), on the lower side of which are points or spurs having blunt ends that are of sufficient length to sink partway through standard office linoleum whereby the support is fixed against lateral movement upon the floor (page 1, lines 96-100, Figs. 1-3). If the furniture supported by plate 20 is lifted and removed, the spurs remain in place so that furniture may be replaced exactly in their original position (page 2, lines 1-4). The disclosed and claimed embodiments allow the furniture to be easily removed from the supports, for example “a body plate adapted to be set under the leg of an article of furniture, said plate having furniture leg locating upstanding extensions defining a part of the boundary of the plate *shaped to receive a leg therebeside for free vertical movement....*” See Brabson claim, emphasis added.

Born discloses a universal slide caster 20 that enables easy sliding movement of bulky structures along a floor surface (col. 2, lines 27-31) while the furniture is engaged with the caster. A slide shoe 22 at the bottom of the caster 20 is made of a lubric plastic material to be smoothly slidable on all ordinary floor surfaces (col. 2, lines 58-61, Figs. 1-3), and a pressure sensitive adhesive 21A improves the grip and facilitates mounting of the caster.

Thus, Brabson provides a furniture support that prevents the sliding of the furniture while engaged with the supports. Brabson further provides that the furniture is freely engageable with the supports, and that features of the supports allow the furniture to be repositioned exactly after removal from the supports. By contrast, Born discloses a universal slide caster having a slidable shoe to allow sliding movement of bulky structures, and an adhesive to improve grip and facilitate mounting of the slidable caster on the bulky structure.

One of skill in the art would not look to a reference that teaches shoes to ease sliding of furniture to improve a reference that teaches a support that prevents the sliding of furniture. Further, the addition of either Brabson or Born to the other defeats the operation of the starting reference. For example, adding Brabson to Born prevents the furniture from sliding, defeating the intent of Born. Adding Born to Brabson defeats the free engagability of the furniture with the support, defeating the intent of Brabson and preventing the furniture from having any convenient method of being moved.

2) Products in accordance with the claims have experienced significant commercial success due to those products having the features claimed in the present application.

Evidence of commercial success must be considered in determining the issue of obviousness. See MPEP 716.01(a). In *ex parte* proceedings before the Patent and Trademark Office, an applicant must show that the claimed features were responsible for the commercial success of an article if the evidence of nonobviousness is to be accorded substantial weight. See *In re Huang*, 100 F.3d 135, 140, 40 USPQ2d 1685,

1690 (Fed. Cir. 1996) (Inventor's opinion as to the purchaser's reason for buying the product is insufficient to demonstrate a nexus between the sales and the claimed invention.).

In the present case, affidavits presented in February of 2004 present the case for the commercial success of products created under claimed aspects of the present invention. An exemplary affidavit is the one offered by Tim Jacobson on February 10, 2004. Numbered statement 3 makes it clear that Tim had not seen a furnace mounting block like the type described in the patent and that he used from NSA. Numbered statement 4 – “[w]ith the NSA Furnace Mounting Blocks the blocks and the furnace move together as one unit. Thereby, providing an installation time saving of about fifteen minutes for many installations,” provides a clear nexus between the claimed aspect in claim 56 (i.e. “adherent component”) and the reason for Tim’s satisfaction with the blocks. The affidavit of Walter Key offered on Feb. 11, 2004 indicates a rapid rise in sales from at least 50,000 units in to about 174,000 units within two years on a minimal advertising budget of less than \$12,000 during those two years combined (see Walter Key affidavit, numbered statements 4, 6, and 7). However, it is even more important that numbered statement 6 (emphasis added) of the Tim Jacobson affidavit clearly states that specific market share increases were attributable to the claimed aspects of the furnace mounting product, stating “our company *has adopted* the Furnace Mounting Blocks as our preferred means for mounting furnaces to the floor.”

The Federal Circuit clarified the standard required to prove the nexus between the commercial success and the novel features claimed in the application (From *In re Huang*, 100 F. 3d 135, 140, emphasis added):

Huang's affidavit contains a conclusory assertion that, in his opinion, the sales of the grips derive from the increased thickness of the polyurethane layer and the alignment of the pores. This merely represents the inventor's opinion as to the purchaser's reason for buying the product, and, alone, is insufficient. Instead, the applicant must submit some factual evidence that demonstrates the nexus between the sales and the claimed invention – *for example, an affidavit from the purchaser explaining that the product was purchased due to the claimed features.* ... In sum, Huang simply has not carried his burden to prove that a nexus existed between any commercial success and the novel features claimed in the application.

Contrasted with Huang, in the present case affidavits from multiple purchasers explaining that the product was purchased due to the claimed features are presented, and that specific market share increases occurred as a result. Therefore, Appellants have carried the burden to prove the nexus between the commercial success and the novel features claimed in the application. Each of the claims 5, 8-11, 26, 30, 31, 34, 35, 40, 43, and 57-58 either depends upon claim 56 or includes analogous novel elements that are addressed in the affidavits as discussed regarding claim 56 previously.

For the reasons described above, the references Brabson and Born would not be combined by one of skill in the art. Further, one of skill in the art with knowledge of both references would not combine them to create the present invention as evidenced by the commercial success of the articles of manufacture due to claimed features in the present application. Therefore, the rejection of claims 5, 8-11, 26, 30, 31, 34, 35, 40, 43, and 56-58 under 35 U.S.C. § 103(a) is improper and Appellants request that the rejections be overturned.

C. The rejection of claims 6 and 12 under 35 U.S.C. §103(a) as being unpatentable over Brabson, Born, and U.S. Patent No. 1,880,153 to Rosenzweig (Rosenzweig).

Appellants respectfully submit that claims 6 and 12 are patentable under 35 U.S.C. §103(a) over Brabson in view of Born and in further view of U.S. Patent No. 1,880,153 to Rosenzweig (hereinafter, Rosenzweig) for reasons analogous to those presented regarding claim 5 previously. Appellants respectfully request the Board overturn the rejection of claims 6 and 12 under 35 U.S.C. § 103(a).

D. The rejection of claim 7 under 35 U.S.C. §103(a) as being unpatentable over Brabson, Born, and U.S. Patent No. 3,583,215 to Franz (Franz).

Appellants respectfully submit that claim 7 is patentable under 35 U.S.C. §103(a) over Brabson in view of Born and in further view of U.S. Patent No. 3,583,215 to Franz (hereinafter, Franz) for reasons analogous to those presented regarding claim 5 previously. Appellants respectfully request the Board overturn the rejection of claim 7 under 35 U.S.C. § 103(a).

E. The rejection of claims 15, 17-20, 28, 46, 47 and 49 under 35 USC § 103(a) over Brabson, U.S. Patent No. 4,721,275 to Benton, et al., (Benton), and Born.

Appellants respectfully submit that claims 15, 17-20, 28, 46, 47 and 49 are

patentable under 35 USC § 103(a) over Brabson, U.S. Patent No. 4,721,275 to Benton, et al., (Benton), and Born for reasons analogous to those presented regarding claim 5 previously. Appellants respectfully request the Board overturn the rejection of claims 15, 17-20, 28, 46, 47, and 49 under 35 U.S.C. § 103(a).

F. The rejection of claims 21, 22, 51 and 53 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 1,647,828 to Griswold (Griswold), Brabson, Benton, and Born.

Appellant respectfully submits that claims 21, 22, 51 and 53 are patentable under 35 U.S.C. §103(a) over U.S. Patent No. 1,647,828 to Griswold in view of Brabson, Benton, and Born for reasons analogous to those presented regarding claim 5 previously. Appellants respectfully request the Board overturn the rejection of claims 21, 22, 51, and 53 under 35 U.S.C. § 103(a).

VIII. CONCLUSION

As set forth above, Appellants submit that all remaining claims in the present application are allowable. Therefore, reversal of the rejections by the Appeal Board is hereby requested.

Respectfully submitted,



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CLAIMS APPENDIX

1. (Cancelled)
2. (Cancelled)
3. (Cancelled)
4. (Cancelled)
5. (Previously presented) The mount of claim 56, which further includes a vibration dampening material located on said second surface and adapted to receive the furnace thereon, and wherein said vibration dampening material is defined by an elastomeric material.
6. (Previously presented) The mount of claim 56, which further includes a vibration dampening material located on said second surface and adapted to receive the furnace thereon, and wherein said vibration dampening material is defined by a cork material.
7. (Previously presented) The mount of claim 56, which further includes a vibration dampening material located on said second surface and adapted to receive the furnace thereon, and wherein said vibration dampening material is defined by an elastomeric and cork configuration.
8. (Previously presented) The mount of claim 56, wherein said adherent component is attached to said vibration dampening material, and wherein said adhesive surface is spaced from said second surface.
9. (Original) The mount of claim 8, wherein said adhesive surface is substantially parallel with said second surface.

10. (Previously presented) The mount of claim 8, wherein said adherent component includes a vibration dampening portion located between said second surface and said adhesive surface.

11. (Original) The mount of claim 10, wherein said vibration dampening portion includes an elastomeric material.

12. (Original) The mount of claim 10, wherein said vibration dampening portion includes a cork material.

13. (Cancelled)

14. (Cancelled)

15. (Previously presented) A mount for supporting a furnace above the floor, comprising:

a substantially rigid main body member having a first surface adapted to engage the floor and a second surface spaced from said first surface and adapted to support the furnace above the floor;

a vibration dampening component positioned on and connected with said second surface, said vibration dampening component having an outer adhesive surface adapted to engage and couple said main body member with the furnace; and

wherein said main body member has a locating portion extending from said second surface to abut an outer surface of the furnace and position said second surface relative to the furnace, said locating portion includes two upstanding members that are oriented perpendicular to one another.

16. (Cancelled)

17. (Original) The mount of claim 15, wherein said vibration dampening component includes an elastomeric material.

18. (Original) The mount of claim 15, wherein said vibration dampening component includes a cork material.

19. (Original) The mount of claim 15, wherein said main body member supports the furnace about at least 2 inches above the floor.

20. (Original) The mount of claim 15, wherein said first and second surfaces are substantially parallel.

21. (Previously presented) A combination, comprising:

- a furnace having outer walls that define four corners; and
- a plurality of furnace mounts adapted to hold the furnace above a floor, each of said plurality of mounts located at and abutting the outer walls defining each of said comers, wherein each of said plurality of mounts comprises:
 - a substantially rigid main body member having a first surface adapted to engage the floor and a second surface spaced from said first surface and supporting the furnace above the floor;
 - a vibration dampening component positioned on and connected with said second surface, said vibration dampening component having an outer adhesive surface coupling said main body member with the furnace; and
 - wherein said main body member has an integrally formed locating portion extending from said second surface to abut an outer surface of the furnace and position said second surface relative to the furnace.

22. (Previously presented) The combination of claim 21, wherein said locating portion engages a corner of the furnace.

23. (Cancelled)

24. (Cancelled)

25. (Cancelled)

26. (Previously presented) The mount of claim 56, wherein said upstanding wall members extend substantially along two sides of said main body member.

27. (Cancelled)

28. (Previously presented) The mount of claim 15, wherein said two upstanding members are oriented perpendicular to one another, and wherein each of the two upstanding members has a bearing surface adapted to abut the furnace, and wherein said upstanding members are perpendicular to said second surface.

29. (Previously presented) The combination of claim 21, wherein each of said plurality of furnace mounts are coupled to the furnace free of any mechanical fasteners.

30. (Previously presented) The mount of claim 56, wherein said main body member has a first vertical length and at least one of said upstanding wall members has a second vertical length, wherein said first vertical length is substantially equal to said second vertical length.

31. (Previously presented) The mount of claim 56, wherein said main body member having a first vertical length and at least one of said upstanding wall members having a second vertical length, wherein said first vertical length is greater than said second vertical length.

32. (Cancelled)

33. (Cancelled)

34. (Previously presented) The mount of claim 56, wherein said adherent component including a vibration dampening material, and wherein said adhesive surface spaced from said second surface by said vibration dampening material.

35. (Previously presented) The mount of claim 34, wherein the mount is integrally molded of a polymeric material, and wherein the mount is a rigid body which can support the furnace.

36. (Cancelled)

37. (Cancelled)

38. (Cancelled)

39. (Cancelled)

40. (Previously presented) A mount for supporting a furnace above the floor, comprising:

a molded integrally formed rigid main body member having a first surface adapted to engage the floor and a second surface spaced from said first surface and adapted to support the furnace above the floor;

an adherent component connected with said main body member and located proximate said second surface, said adherent component including an adhesive surface adapted to engage and couple said main body member with the furnace; and

means for locating the furnace on said second surface, wherein said means for locating the furnace is adapted to abut the furnace.

41. (Cancelled)

42. (Cancelled)

43. (Previously presented) The mount of claim 40, wherein the mount is formed of a polymeric material.

44. (Cancelled)

45. (Previously presented) The mount of claim 40, wherein said main body is free of engagement with any mechanical fasteners.

46. (Previously presented) A mount for supporting a furnace above the floor, comprising:

a substantially rigid main body member having a first surface adapted to engage the floor and a second surface spaced from said first surface and adapted to support the furnace above the floor;

a vibration dampening component positioned on and connected with said second surface, said vibration dampening component having an outer adhesive surface adapted to engage and couple said main body member with the furnace; and

wherein said main body member has a locating portion extending from said second surface to abut an outer surface of the furnace and position said second surface relative to the furnace.

47. (Previously presented) The mount of claim 46, wherein said main body is a molded structure.

48. (Previously presented) The mount of claim 46, wherein the mount is adapted to be coupled to the furnace free of any mechanical.

49. (Previously presented) The mount of claim 46, wherein said first and second surfaces are parallel.

50. (Previously presented) The mount of claim 46, wherein said main body is molded of a polymeric material;

wherein the mount is adapted to be coupled to the furnace free of any mechanical fastener connecting with said main body member; and wherein said first and second surfaces are parallel.

51. (Previously presented) A combination, comprising:

a furnace having outer walls that define four comers; and

a plurality of furnace mounts adapted to hold the furnace above a floor, each of said plurality of mounts located at and abutting the outer walls defining each of said corners, wherein each of said plurality of mounts comprises:

a substantially rigid molded main body member having a first surface adapted to engage the floor and a second surface spaced from said first surface and supporting the furnace above the floor, said main body member is a single piece integrally formed structure including a locating portion adapted to abut at least one of the outer walls of the furnace; and

a vibration dampening component positioned on and connected with said second surface, said vibration dampening component having an outer adhesive surface coupling said main body member with the furnace.

52. (Previously presented) The combination of claim 51, wherein each of said plurality of furnace mounts are coupled to the furnace free of any mechanical fasteners.

53. (Previously presented) The combination of claim 51, wherein said first and second surfaces are parallel; and, wherein said main body is a molded of a polymeric material.

54. (Cancelled)

55. (Cancelled)

56. (Previously presented) A mount for supporting a furnace above the floor, comprising:

an integrally formed main body member having a first surface adapted to engage the floor and a second surface spaced from said first surface and adapted to support the furnace above the floor, said main body member including a pair of integrally formed upstanding wall members defining a locator portion to abut an outer surface of the furnace and position the furnace relative to said main body member; and

an adherent component connected with said main body member and located proximate said second surface, said adherent component including an adhesive surface adapted to engage and couple said main body member with the furnace.

57. (Previously presented) The mount of claim 26, wherein said adherent component is attached to said second surface, and wherein said adhesive surface is spaced from said second surface.

58. (Previously presented) The mount of claim 40, wherein said adherent component includes a vibration dampening portion located between said second surface and said adhesive surface.

EVIDENCE APPENDIX

A. Purchaser affidavits by Tim Jacobson, Dave Cournoyer, Ron Jackson, Stephen Hutcheson, John Knipe, Gene Lee, Rick Elston, and Jeff Malone, entered into the record Feb. 11, 2004.

B. Affidavit of Walter R. Key, a representative of the successor in interest of the Assignee of the present application, entered into the record Feb. 11, 2004.

C. U.S. Patent 3,669,066 to Smith, entered into the record Sept. 24, 2003.

D. U.S. Patent 3,794,181 to Canham, entered into the record Feb. 11, 2004.

E. U.S. 5,557,824 to Bushey, entered into the record Sept. 24, 2003.

RELATED PROCEEDINGS APPENDIX

[None]